



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

James Marshall
California Regional Water Quality Control Board
Central Valley Region
Sacramento Main Office
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

February 13, 2008

Dear Mr. Marshall:

Thank you for the opportunity to comment on the draft NPDES permit for the Modesto Water Quality Control Facility (NPDES number CA0079103). EPA's comments pertain to the compliance schedule provision for the EC limitations implementing the TMDL for Salt and Boron in the Lower San Joaquin River.

The TMDL for Salt and Boron has been approved by EPA, and EPA expects to act on the accompanying compliance schedule-authorizing provisions prior to the March 13th, 2008 Regional Water Board hearing for the adoption of the Modesto permit. As described in EPA's *California Permit Quality Review Report on Compliance Schedules* (October 31, 2007), any compliance schedule that extends past the expiration date of the permit must include final effluent limitations in the permit in order to ensure enforceability of the compliance schedule as required by CWA section 502(17) and 40 CFR Section 122.2 (definition of a compliance schedule).¹ Thus, tables 6 and 7 of the permit should contain final effluent limitations consistent with the final concentration-based waste load allocations (WLAs) contained in the TMDL for Salt and Boron, with a footnote explaining the compliance schedule provision. Similarly, the permit fact sheet should be corrected to reflect this change by deleting the sentence, "Therefore, final water quality based effluent limitations for salinity have not been established in this Order as the schedule for compliance provided in the TMDL extends beyond the 5 year effective term of this permit."

In addition, the permitting authority must make a reasonable finding, adequately supported by the permit fact sheet, that the compliance schedule: will lead to compliance with the effluent limitation to meet water quality standards; is appropriate; and demonstrates that compliance with the final WQBEL is required as soon as possible.² The permit fact sheet needs to clearly demonstrate the appropriateness of including this

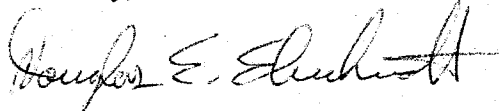
¹ See also memorandum from James Hanlon, Director of EPA's Office of Wastewater Management, to Alexis Strauss, Director of Water Division, EPA Region 9 dated May 10, 2007, which is attached to the *Permit Quality Review Report*. A copy of the *Permit Quality review Report*, including the James Hanlon memorandum, is enclosed with this letter.

² *I.d.*

particular compliance schedule in this permit for the discharge of salt and boron and explain how compliance with the WQBEL will be made as soon as possible.³ Any compliance schedules longer than one year in duration must set forth interim requirements and dates for their achievement within the permit fact sheet.

Thank you for your consideration of these comments, as well as all your work in developing this permit. If you have any questions, please contact me at (415) 972-3420, or Nancy Yoshikawa, at (415) 972-3535.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas E. Eberhardt". The signature is fluid and cursive, with a large, stylized initial 'D'.

Douglas E. Eberhardt
Chief, NPDES Permits Office

Enclosure: *Permit Quality Review Report* including attached James Hanlon memorandum.

³ Factors relevant to whether a compliance schedule in a specific permit is "appropriate" and factors relevant to a conclusion that a compliance schedule requires compliance with a WQBEL "as soon as possible" can be found in the James Hanlon memorandum cited previously.